

EXHIBIT 65

Excerpts of
Mar 8, 2023
HB533
Hearing

(Depo. Ex. 6)

3/8/2023

House Judiciary Hearing - HB 533

Audio Transcription

EXHIBIT 6

D. Fenton

5/17/2023

Reporter: Sharon Saalfeld
RDR, CRR

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New Hampshire House of Representatives
House Judiciary Hearing - HB 533
March 8, 2023

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1 (Excerpt begins)

2 CHAIRMAN LYNN: So with that, I'm going to
3 open the hearing on HB533, the amendment, and I would
4 recognize Diana Fenton from the Department of
5 Education.

6 Oh, I'm sorry. Do we have -- you have
7 somebody with you, Ms. Fenton?

8 MS. FENTON: I do. Good morning. My name is
9 Diana Fenton. I'm an attorney with the Department of
10 Education. With me is Richard Farrell, who's an
11 investigator for the Department.

12 I want to be clear, as an initial matter,
13 this bill before you, this amendment which requests
14 subpoena power for the Department of Education for
15 purposes of conducting investigations of educator
16 misconduct is not about Commissioner Frank Edelblut.
17 It's not for Commissioner Frank Edelblut. It is for
18 Investigator Richard Farrell, in order for him to
19 conduct his investigations. The Department has been
20 working very hard over the past few years to enhance
21 our child safety initiatives. We have seen various
22 stories in the news where the Department has been
23 working on addressing those matters. Concord always
24 comes to mind, where we are finding educators who
25 should not be around children, who are having

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1 inappropriate relationships with children. They are
2 few and far between, but they're very, very important
3 and critically important.

4 The Code of Conduct was passed in 2018, and
5 under that document, the Department conducts
6 investigations of educator misconduct and subpoenas
7 power, which other state agencies have in order to
8 facilitate their investigations, OPLC as a point --
9 case in point, has subpoena power would help to
10 facilitate that. But you don't have to take my word
11 for it. That's why Richard Farrell is here, to speak
12 on the work that he does.

13 Please.

14 MR. FARRELL: Good morning. My name is
15 Richard Farrell. I'm currently employed by the
16 Department of Education as an investigator. I began
17 this mission on July 1st, 2013.

18 CHAIRMAN LYNN: Okay. You knew, Mr. Farrell,
19 can I just ask you, when you -- I'm not going to
20 interrupt you now, but when -- before you leave, would
21 you just fill out one of the pink cards?

22 MR. FARRELL: Yes, please.

23 CHAIRMAN LYNN: Thank you.

24 MR. FARRELL: I began this mission in July
25 1st, 2013, after serving 30 years as a member of the

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1 New Hampshire State Police. Before that, I was a
2 licensed educator. I spent three years teaching high
3 school English and coaching football in Massachusetts
4 and in a private school in Southern New Hampshire. At
5 the time of my employment, the New Hampshire -- New
6 Hampshire relied on administrative rules to define the
7 conduct -- to define and conduct investigations into
8 allegations associated with educator misconduct. The
9 Code of Conduct didn't exist at all. Unfortunately, I
10 learned very quickly that the tools available to me to
11 complete my assigned cases were very limited. In fact,
12 I didn't have any at all. Therefore, the best approach
13 forward for me was to make the determined effort to
14 identify myself to, create relationships with, and
15 cultivate trust with the field. This included with
16 superintendents, principals, union attorneys, union
17 reps, attorneys representing school districts, and
18 other stakeholders.

19 At first, and very understandably, there was
20 skepticism, but I'm a person of Irish heritage, and
21 I've been gifted with the ability to tell people where
22 to go and convince them to look forward to the trip.
23 You see, I had no tools. I had no warrants. I had no
24 subpoenas. I just had administrative rules and
25 relationships. I asked Dr. Judy Fillion almost

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<p style="text-align: right;">Page 5</p> <p>1 immediately, my immediate supervisor, legendary 2 Dr. Fillion, why we didn't at least have subpoena 3 powers while other investigators overseeing licensure 4 had that tool over at OPLC. I didn't get a reasonable 5 answer, and I've been asking ever since for ten years. 6 I think it's very important to understand 7 very definitively that my first and most important 8 mission is to keep kids safe. I have been called to 9 public service for nearly 40 years, and I take this 10 responsibility very, very seriously. This is about kid 11 -- keeping kids in our school safe and protecting them 12 from the 1 percent of educators who do not share in 13 this belief. That's right, 1 percent. I worked for 14 Commissioner Barry. I now work for Commissioner 15 Edelblut, and God willing, I will work for another 16 commissioner in the future. This is not, as a local 17 newspaper trumpeted this past Sunday, "Edelblut seeks 18 subpoena power to investigate educator misconduct." 19 That's not what this is about. 20 I am asking, the agency is asking, and we 21 need to do three things. This request has nothing to 22 do with political agenda or me carrying water for any 23 commissioner. I need these tools to complete my 24 mission. The three-pronged mission is, protect our 25 most vulnerable neighbors, our children, protect our</p>	<p style="text-align: right;">Page 6</p> <p>1 educators. That's right. Well over 90 percent of our 2 cases alleging misconduct are deemed to be unfounded. 3 We exonerate more teachers every day than we do take 4 action against the license of a teacher. Over the past 5 ten years, I've been -- investigated, on average, 150 6 cases that we log in as cases that meet our triage 7 process. In any given year, we take action, 8 suspensions or revocations, involving ten educators on 9 average. This does not count the many reports we get 10 that do not survive our triage process. 11 And finally, the third part of our mission is 12 to remove educators that did damaging our kids. Over 13 the past ten years, I've been faced with difficult task 14 of asking for information. Many times, I've been 15 denied access to reports, statements, witness 16 information, names, ages, local disciplinary records, 17 investigative findings, and other crucial bits of 18 evidence that would've assisted in protecting students, 19 exonerating educators falsely accused, and removing bad 20 apples from our classrooms. 21 CHAIRMAN LYNN: I'm sorry. Did you say -- 22 you said you had been denied access? Is that what 23 you're saying? 24 MR. FARRELL: That's correct. 25 CHAIRMAN LYNN: All right.</p>
<p style="text-align: right;">Page 7</p> <p>1 MR. FARRELL: Over the past two to three 2 years, school districts are routinely hiring 3 third-party investigators, attorneys that work for the 4 districts as contractors. And, in fact, a new company 5 has been started that focuses strictly on providing 6 third-party investigations for school districts. Most 7 of the time, we are not allowed to look at those 8 reports. We don't have subpoena power to get those 9 reports. Sometimes we're allowed to review them 10 in-camera in a conference room at a law firm and glean 11 the information from those. Many times, we're not 12 allowed to touch them at all. Many of our most 13 difficult and heinous cases involving the exploitation 14 of our children, the sexual exploitation of our 15 children, began on social media postings, text 16 messaging, and the use of cell phones. Often, the 17 initial triage of these cases do not appear to be 18 criminal in nature. Therefore, our many, many partners 19 in law enforcement could not assist us in getting the 20 information that we needed. We have no tools to get 21 this information because we have no subpoena powers. 22 Again, the kids are left hanging. The teachers accused 23 have no support and don't have the information to 24 exonerate them, and the bad teacher has the possibility 25 of slipping off the hook. Again, this comes down to</p>	<p style="text-align: right;">Page 8</p> <p>1 relationships I've created and creativity in the 2 investigations. 3 We have all -- have been very lucky that this 4 agency and I and school districts and their staff, 5 union reps and their attorneys work reasonably well 6 together to get the job done, but the day is coming 7 when this will not happen. I am -- I'm amazed, 8 absolutely amazed, that an investigator for OPLC can 9 subpoena records associated with barbers, cosmeticians, 10 nurses, and other licensees, and the Department of 11 Education, who oversee the safety of children, do not 12 have that authority. It's 2023. Our children should 13 be protected, and subpoena power will allow us to do 14 that. 15 Thank you very much. If you have any 16 questions, I'll -- 17 CHAIRMAN LYNN: Questions for this -- for 18 either of these witnesses? 19 Yes, Representative Perez. 20 REPRESENTATIVE PEREZ: Thank you. Thanks for 21 taking my question. Will this cover all school 22 employees? For example, will it cover the principals, 23 the custodians, or is it just educators? 24 MR. FARRELL: So for my purposes as educator 25 misconduct, it's for license holders. So that would be</p>

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<p>1 superintendents, assistant superintendents, principals. 2 administrators, teachers, paraprofessionals that hold 3 licenses. 4 CHAIRMAN LYNN: All right. Other questions 5 for this witness? Seeing none, thank you -- 6 Oh, I'm sorry. Representative Brennan. 7 REPRESENTATIVE BRENNAN: Thank you. 8 Mr. Chairman. Thank you for taking my question. 9 Earlier in your testimony, you stated that 10 1 percent of teachers do not share the common goal of 11 keeping our children safe, and I'm wondering if you 12 might be able to provide the source for that number. 13 MR. FARRELL: I'd be happy to give you the 14 list of suspended and revoked educators that we've 15 compiled. We can do it by year, we can do it by a 16 alphabetical order, but it's a small percentage of 17 people that have engaged in misconduct that have put 18 children at risk, and that's the 1 percent I'm talking 19 about. 20 REPRESENTATIVE BRENNAN: Follow up, please. 21 MR. FARRELL: Yes. 22 REPRESENTATIVE BRENNAN: Would that 1 percent 23 be in regards to New Hampshire educators, or is that a 24 nationwide figure? 25 MR. FARRELL: That'd be New Hampshire. I</p>	<p>1 don't have any facts or figures to support any other 2 state but the one that I work in. 3 REPRESENTATIVE BRENNAN: Thank you. 4 CHAIRMAN LYNN: Any questions? 5 Representative DiLorenzo. 6 REPRESENTATIVE DILORENZO: Thank you, 7 Mr. Chair. 8 Sir, could you tell me what the significance 9 of your Irish heritage has to do with this bill? 10 MR. FARRELL: Oh, it's kind of like to -- a 11 little bit of blamey that I have. It's nice to be 12 able to communicate with, create relationships, get 13 people to trust that I'm not working opposed to their 14 position. It's -- sometimes it's easier to convince 15 people to be on your team than trying to pound them 16 over the head. 17 REPRESENTATIVE DILORENZO: Thank you. 18 CHAIRMAN LYNN: Representative Paige. 19 REPRESENTATIVE PAIGE: Yeah. Thanks for 20 taking my question. Top of the morning. 21 So the -- just I want to -- I have a question 22 on terms of what you defined. You said the license 23 holders would come under the purview of this subpoena 24 power, right? So if I have a license to teach or 25 administrate or whatever, a neighbor does, that -- the</p>
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<p>1 Department would have that authority over that person 2 wherever they may be? 3 MS. FENTON: I'm going to assist on this 4 question. 5 REPRESENTATIVE PAIGE: Well, I just -- could 6 he answer that question, though? I think -- he 7 mentioned that. I want to understand. He's doing the 8 investigation. That's why he's here, right? 9 MS. FENTON: He certainly is, yes. 10 REPRESENTATIVE PAIGE: Thank you. 11 MR. FARRELL: So the Code of Conduct is the 12 method that we use to conduct investigations. And the 13 Code of Conduct is very limited in its scope, and the 14 scope is a license holder. So, for example, we cannot 15 go in and examine a custodian, a kitchen staffer, a 16 secretary, because they don't hold licenses with the 17 Department of Education. So my investigations and the 18 Code of Conduct is limited to those persons who hold 19 licenses that we control. Anybody else in the school 20 district, any other employee, we can't use the subpoena 21 power for them because they're not license holders. So 22 it's limited to those persons that hold the license. 23 CHAIRMAN LYNN: Other -- follow-up? Sure. 24 REPRESENTATIVE PAIGE: Yeah. 25 Changing subjects quickly, it sounded like.</p>	<p>1 if I understood your testimony correctly, you said that 2 you're having success in your job right now, but the 3 day will come. Is that what you said? 4 MR. FARRELL: Yeah. We are having success, 5 and we are getting increasingly pushback from certain 6 stakeholders that are saying, "No, we're not going to 7 provide that information for you." I can give you 8 anecdotal -- or I can give you definitive information 9 that -- for example, just this week we had a -- an 10 educator that has come under our radar, this licensed 11 educator that was -- that is under investigation. And 12 I had to deal with three different superintendents to 13 ask for assistance in an investigation to determine 14 whether or not misconduct may have occurred. I got 15 three different answers from three different 16 superintendents, two of which were great and very 17 assisting. One flat out said, "No, I'm not going to 18 give you that information." And it's crucial 19 information to determine whether or not educator 20 misconduct occurred and any action that we might take 21 regarding this educator. So I had one case, three 22 superintendents. One flat out said, "No, thank you." 23 I don't have any authority to say to the 24 superintendent, no, I really need this information, 25 please, please, please give me this information. I</p>

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<p>1 don't have the authority to do it. So I have three 2 superintendents, two had levels of cooperation, one 3 said no. 4 CHAIRMAN LYNN: Other questions? Yes. 5 Representative Greeson. 6 REPRESENTATIVE GREESON: Thank you. 7 Mr. Chairman. 8 Thank you, sir, for answering our questions. 9 Is a subpoena a first line of action or a last line of 10 action for you? 11 MR. FARRELL: For me, it'd be the last line 12 of action. I would exhaust every other opportunity I 13 had and that would be the last thing that I would use. 14 CHAIRMAN LYNN: Other questions for this 15 witness? Representative Manos. 16 REPRESENTATIVE MANOS: Thank you, Mr. Chair. 17 I believe you talked about third-party 18 investigators, and those are contractors with the 19 Department of Education. 20 MR. FARRELL: No, contractors for school 21 districts. 22 REPRESENTATIVE MANOS: Okay. And so you're 23 having difficulty getting their reports? 24 MR. FARRELL: Correct. 25 REPRESENTATIVE MANOS: Thank you.</p>	<p>1 CHAIRMAN LYNN: Representative Andrews. 2 REPRESENTATIVE ANDREWS: Thank you, 3 Mr. Chair. Thank you for taking my question. And 4 either one of you can answer this. If this only deals 5 with licensed employees of a school district, where 6 does it fall? Other employees, if they are -- come 7 under misconduct, who do they complain to? 8 MS. FENTON: It would be an employment issue 9 that the district would address. 10 CHAIRMAN LYNN: Other questions? 11 Representative Smith. 12 REPRESENTATIVE SMITH: Yes. Thank you. 13 Following up on my colleague's question. In 14 that situation, if you were aware of a problem, would 15 you -- if someone is not licensed but employed in the 16 public schools in this state, would you be able to go 17 to the Attorney General's Office, Attorney General 18 providing counsel for all agencies, to ask for help in 19 getting that information, whether it requires a 20 subpoena or not? 21 MR. FARRELL: When it comes to non-licensed 22 persons, I routinely have referred those type of cases 23 to the local county attorney, the local police, and 24 other partners that we have. Because sometimes that 25 behavior that is in question maybe border on criminal</p>
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<p>1 behavior. So we would immediately -- I immediately 2 pass that on to other authorities. We just had -- I 3 think you probably saw the news that a bus driver was 4 arrested yesterday. We got that information from the 5 school district, from the superintendent almost within 6 minutes after he became aware of it. We immediately -- 7 I immediately forwarded it to the Chief of Police in 8 the Hudson Police Department and they conducted a 9 robust investigation that had had nothing to do with 10 us, but we were able to refer it to the right agency. 11 CHAIRMAN LYNN: Other questions for this 12 witness? Yes, Representative Leavitt. 13 REPRESENTATIVE LEAVITT: Thank you for taking 14 my question. 15 So you just mentioned that an educator was 16 found -- or you're looking into investigating. And why 17 would you have more than one superintendent to ask 18 the -- you know, to question about that person? Don't 19 you normally just have one superintendent that that 20 educator would be under? 21 MR. FARRELL: In this particular case, and 22 very often this is the case, this involved three 23 superintendents. One was superintendent of a district 24 at the time the person was initially hired, the second 25 superintendent was the new superintendent who works in</p>	<p>1 the -- that same district, and the third superintendent 2 was a previous employer. So we went out and asked each 3 one of those superintendents to assist us in triaging 4 that case. 5 CHAIRMAN LYNN: All right. Representative 6 Horgan. 7 REPRESENTATIVE HORGAN: Thank you very much. 8 You mentioned the case of the bus driver, and I read 9 about that in the newspaper. I guess it was this 10 morning or yesterday morning. They all kind of meld 11 together and the -- actually, the case of the bus 12 driver, bus drivers are licensed, but I think they're 13 to drive school buses, but they're licensed by the DOT. 14 But -- and this is a little bit out of the purview of 15 our -- 16 CHAIRMAN LYNN: So is there a question? 17 REPRESENTATIVE HORGAN: Yes, there's going to 18 be, yes. A little bit out of the purview of question, 19 and we're going against the political trend, as anybody 20 listened to governor's budget address knows, but would 21 it make your job easier if perhaps we licensed 22 everybody who was in a child-facing role with the 23 schools, regardless of whether or not they were 24 educators or paraprofessionals or just support staff? 25 MR. FARRELL: Well, it -- no, the answer is</p>

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1 no. It wouldn't make my job easier. And I think we
 2 have to define who educators are and what the Code of
 3 Conduct is. So I think by expanding -- I wouldn't want
 4 to expand the role of this agency to be involved with
 5 persons that are not licensed.
 6 REPRESENTATIVE HORGAN: Thanks.
 7 CHAIRMAN LYNN: Other -- yes.
 8 Representative MCBEATH.
 9 REPRESENTATIVE MCBEATH: Good morning.
 10 CHAIRMAN LYNN: Good morning.
 11 REPRESENTATIVE MCBEATH: I'm in a different
 12 place.
 13 CHAIRMAN LYNN: All right.
 14 REPRESENTATIVE MCBEATH: No, Chair. Good
 15 morning and thank you for taking my question.
 16 I think you testified that you said without
 17 the subpoena power, you would have no authority to get
 18 the information that you were requesting. So what is
 19 the scope of the subpoena? Is it, you can get any
 20 information you want? I mean, what's the hook for, you
 21 know, containing what information your subpoena power
 22 has?
 23 MR. FARRELL: The subpoena power would be
 24 limited to what I ask for. So I wouldn't -- it's not a
 25 fishing net that would go out and, you know, drag the

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1 ocean for all types of information. It'd be
 2 specific -- a report, for example, personnel record,
 3 for example. Past disciplinary practices or actions
 4 against the educator. Those are the type of things,
 5 witness statements. We're not casting a wide net and
 6 trying to capture people in that net. We want to be
 7 very limited and focused on the allegation and those
 8 things associated with the allegation.
 9 CHAIRMAN LYNN: Yes.
 10 REPRESENTATIVE MCBEATH: So I think that's
 11 what I'm asking. So you are not limited within the
 12 scope of whatever you want?
 13 MR. FARRELL: Absolutely not. And keep in
 14 mind, Code of Conduct is my guide. That's the -- my
 15 boundaries. Those -- just like when I was in the state
 16 police, there are certain things, those are -- I have
 17 to stay within my lane. And the Code of Conduct is my
 18 lane, and I don't go outside that Code of Conduct. I
 19 don't go outside those lanes. So the idea that --
 20 you'll see, if you look at the Code of Conduct, you
 21 have to be very careful that people weaponize the Code
 22 of Conduct. Parents weaponize it on occasion, school
 23 districts perhaps. We don't want to weaponize the
 24 code. We want to stay within the bounds of the code
 25 and weaponizing it is really a bad idea.

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1 REPRESENTATIVE MCBEATH: Thank you.
 2 CHAIRMAN LYNN: Other questions for this
 3 witness? Yes, Representative, excuse me, Turer.
 4 REPRESENTATIVE TURER: Thank you, Mr. Chair.
 5 Thanks for taking the question.
 6 I am sort of going back to the idea this is a
 7 -- an amendment to the original bill that came before
 8 us. And I know it's a full replacement of that bill.
 9 But I guess my question is, the original bill
 10 basically, and I believe that's why it's before this
 11 committee, specifically targeted complaints related to
 12 student discriminatory practices. And I'm wondering,
 13 is the request before us now -- sounds like it may be
 14 much broader than sort of things related to student
 15 discriminatory practices. So I'm wondering how you see
 16 the split between the two and whether or not this is
 17 actually much broader than sort of what originally was
 18 put before us. Thanks.
 19 MS. FENTON: This is a completely different
 20 concept than the original House Bill 533. And as I
 21 mentioned at the beginning of my testimony, Richard
 22 Farrell had been asking for this type of bill for quite
 23 a while. And in working with Representative Lynn and
 24 working with the Attorney General's office on the
 25 original House Bill 533, we have since worked with the

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1 AG's office to come up with an SOP as to how we
 2 transfer those cases to the Human Rights Commission and
 3 the AG's office. It was brought up in that
 4 conversation kind of separate and apart from it, that
 5 the Department should probably seek subpoena power for
 6 the Code of Conduct investigations that we do. And so
 7 we thought that this would be the opportunity to do
 8 that. And my understanding is Representative Lynn has
 9 worked -- or spoken to the attorney general's office
 10 about this amendment. But obviously, I will let him
 11 speak to that.
 12 MR. FARRELL: No, that's true. The second --
 13 the Amendment 20230739H is -- you'll see that the
 14 wording of that is slightly different than the earlier
 15 proposed amendment. And that change in wording
 16 reflects suggestions by the Attorney General's office.
 17 That's why the -- that's the slight change in wording.
 18 REPRESENTATIVE TURER: Okay. So just quick
 19 follow-up. And I don't know whether I'm asking this of
 20 -- the scope then of what we're talking about today
 21 would go beyond sort of the original bill in terms of
 22 not just targeting discriminatory complaints, but
 23 targeting essentially any issue before the -- that
 24 comes before you.
 25 MS. FENTON: The short answer to your

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<p style="text-align: right;">Page 21</p> <p>1 question is, yes, it is broader, but I'm going to --</p> <p>2 it's a nuance because it falls directly within the Code</p> <p>3 of Conduct. So to reference back to Richard Farrell,</p> <p>4 we are within the bounds of the Code of Conduct, but it</p> <p>5 is outside of the discriminatory practices, yes. Thank</p> <p>6 you.</p> <p>7 CHAIRMAN LYNN: Other questions for the --</p> <p>8 Yes, Representative Payne -- Paige? I'm sorry.</p> <p>9 REPRESENTATIVE PAIGE: Could -- that could be</p> <p>10 true. So I'm just trying an off -- bouncing a little</p> <p>11 bit off of Representative Turer's question in the</p> <p>12 timeline. And I'm trying to catch up from the original</p> <p>13 bill to the amendments we have with the subpoena issue</p> <p>14 here before us. But if I'm understanding this</p> <p>15 correctly, Mr. Farrell's been working at the Department</p> <p>16 of Education for about ten years. 2018 is when the</p> <p>17 Code of Conduct has -- was passed or adopted, however</p> <p>18 we want to phrase that. And now it's 2023. But Mr.</p> <p>19 Farrell's been asking for the subpoena power for as</p> <p>20 long as he's been employed there. Is this the first</p> <p>21 time the department's asked -- this is a yes or no. Is</p> <p>22 this the first time the department's asked for subpoena</p> <p>23 power?</p> <p>24 MS. FENTON: Yes.</p> <p>25 CHAIRMAN LYNN: Other questions for this</p>	<p style="text-align: right;">Page 22</p> <p>1 witness? Seeing none, thank you very much.</p> <p>2 (End of excerpt)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 23</p> <p>1 CERTIFICATION</p> <p>2</p> <p>3 I, Alicia Jarrett, do hereby certify that the</p> <p>4 foregoing is a correct transcript from the electronic</p> <p>5 sound recording provided for transcription and prepared</p> <p>6 to the best of my professional skills and ability.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 ALICIA JARRETT, AAERT NO. 428 DATE: April 14, 2023</p> <p>25</p>	

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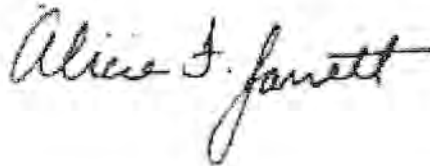
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C E R T I F I C A T I O N

I, Alicia Jarrett, do hereby certify that the foregoing is a correct transcript from the electronic sound recording provided for transcription and prepared to the best of my professional skills and ability.



ALICIA JARRETT, AAERT NO. 428

DATE: April 14, 2023